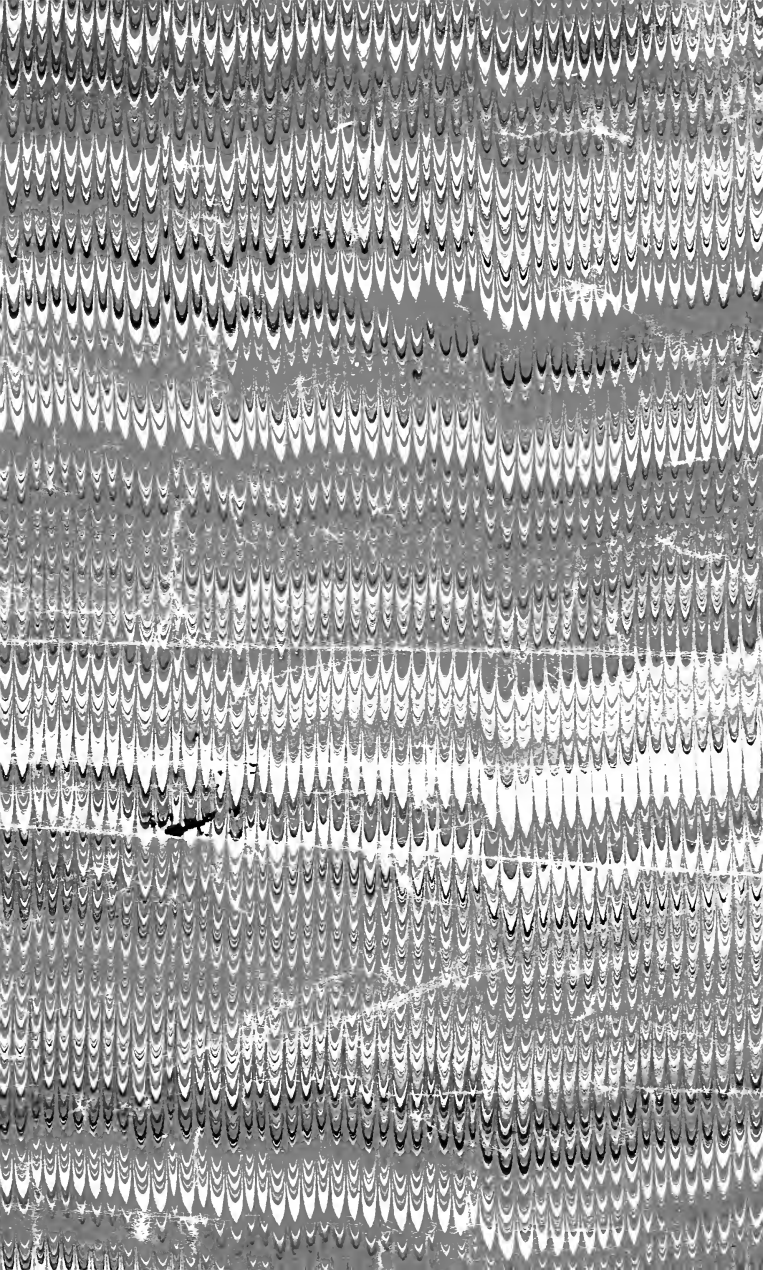


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A
FULL STATEMENT
OF THE
TRIAL AND ACQUITTAL
OF
AARON BURR, Esq.

CONTAINING,

*All the proceedings and debates that took place before
the Federal Court at Frankfort, Kentucky,
November 25, 1806.*

By JOHN WOOD,
*Editor of the "Western World" who attended at the
Trial—*

Alexandria :

PRINTED BY COTTOM AND STEWART,
and sold at their Book-stores in Alexandria and
Fredericksburg.

1807.

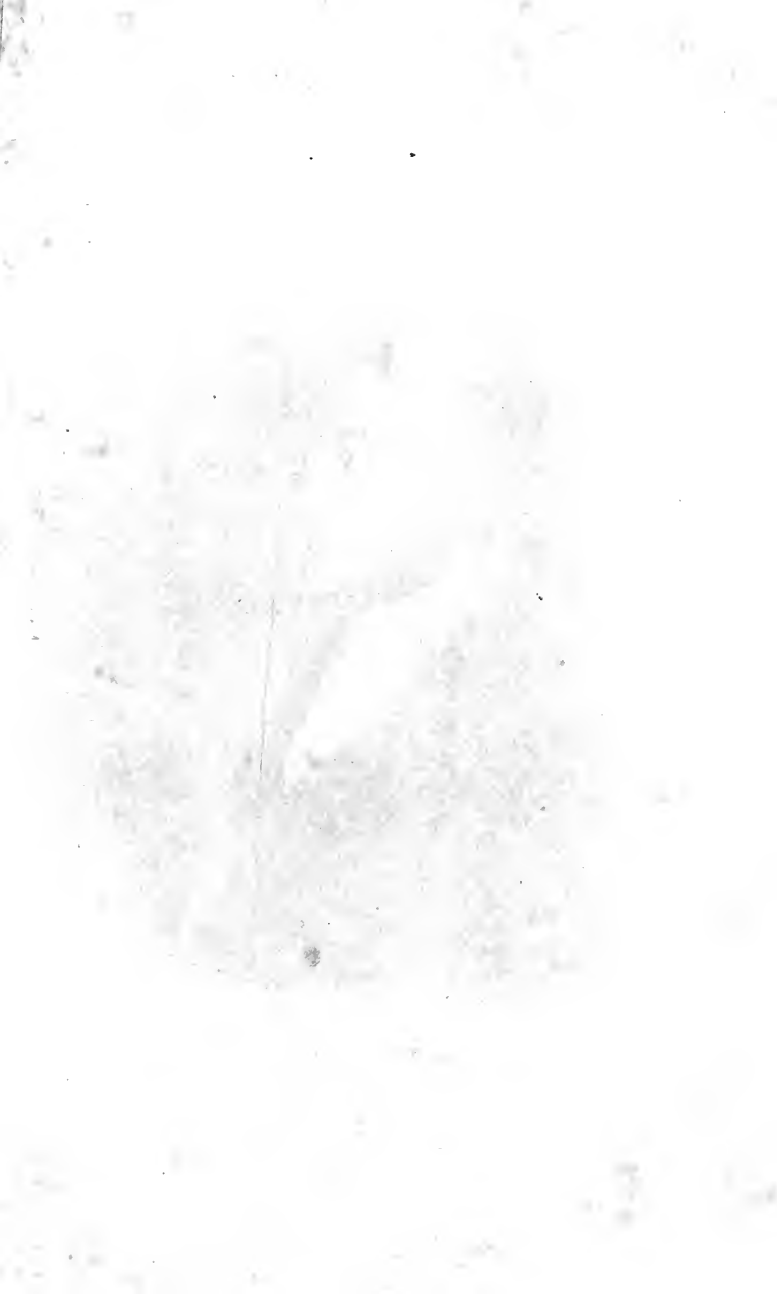
District of Columbia, ss.

BE IT REMEMBERED, That on the first day of January, in the thirty-first year of (L. S.) the Independence of the United States of America, COTTOM AND STEWART, of the said District hath deposited in this office the Title of a Book, the right whereof they claim as proprietors, in the words following. to wit:

"A full statement of the Trial and Acquittal of Aaron Burr, Esq. Containing all the proceedings and debates that took place before the Federal court at Frankfort, Kentucky. November 25, 1806.

In conformity of an Act of Congress of the United States, entitled, "An act for the encouragement of learning, by securing the copies, of Maps, Charts, and Books, to the authors and proprietors of such copies, during the times therein mentioned:" And also, to an Act entitled. "An Act supplementary to an Act entitled, "An Act for the encouragement of learning, by securing the copies of Maps, Charts, and Books, to the authors and proprietors of such copies, during the times therein mentioned, and extending the benefits thereof to the arts of Designing, Engraving, and Etching, historical and other prints."

G. DENEALE, C. D. C. D. C.





AARON BURR.

TRIAL OF

AARON BURR.

Federal Court—Kentucky District,

Tuesday, November 25th, 1806.

This day came the attorney for the United States and moved the court to award a warrant to summon a grand jury to appear here on Tuesday the 26th day of this term, to enquire upon the breach of the laws of the United States, alluded to in the affidavit filed on the sixth day of this term by the said attorney, and upon such other matters as may be submitted to them. And on the farther motion of the said attorney for the United States, stating that it was necessary to have subpoenas issued to compel the attendance of witnesses to give testimony to the said grand jury to support the indictments he intends to prefer against the said Aaron Burr, Esq. it is ordered that the clerk issue subpoenas upon the request of the said attorney for witnesses.

Tuesday, December 2.

The grand jury ordered to be summoned to this day having appeared were empannelled and sworn. Judge Innes then delivered to them the following charge :

Gentlemen of the Grand Jury

You are convened this day upon a special occasion. The event exhibits to the world the importance of the institution which secures to the citizens of America the inquiry of a

grand jury in all cases affecting either life or liberty.

Grand jurors are constituted judges of the actions of their fellow-citizens, which they are to examine agreeably to that rule, which compels mankind to make their moral actions conformable to it.

This rule of action is defined to be the law of the land, from which we ought not to deviate, and which it is our duty to obey, by conforming to all its requisites.

The law doth not restrain a man's actions otherwise than by exhibiting a penalty for a breach thereof; it is therefore clearly understood that all our actions are lawful which are not prohibited.

Men of virtuous minds find no difficulty in conforming to and squaring their actions with the rules prescribed by law. It is the vicious part of mankind, who have from time to time, and in all past ages, given rise to the many penal laws which are enacted in every well regulated government, to prevent the perpetration of acts of violence upon persons or property, or acts which are considered injurious to government.

If a man commits an act which the law prohibits, it is rebelling against the society in which he lives and setting the penalty of the law at defiance. Reason and justice require that such a man should be punished for his rash and presumptuous deed. It is the duty of one and all who compose the society to exert their united endeavours in bringing the offender to trial and punishment, not only

with a view of correcting the culprit for his disobedience, but by exemplary punishment to deter others from the perpetration of crimes and misdemeanors.

It is the duty of those persons who are entrusted with the administration of government to keep a watchful eye over the conduct of their fellow-citizens; to prevent as far as practicable the breach of the laws and to direct an enquiry to be made whenever a probable cause shall require it.

This enquiry when requisite, at an early stage of the business becomes, gentlemen, your particular province. All the penal laws of the American government are subject to your examination, and it is your duty to enquire whether any of our fellow-citizens have committed offences prohibited by them within this district; and if the knowledge of any offence is known to your body, or in the course of your enquiries if it shall be proved to you that any person has been guilty of a breach of the laws, you are to make it known in order that the culprit may be brought to a trial and upon conviction receive the punishment affixed to the offence.

To the faithful discharge of this duty you have solemnly engaged in the presence of God and your country, to enquire diligently and true presentment make of all offences which shall come to your knowledge upon the present occasion. Act therefore with deliberation—with impartiality—without favour or affection to any person. Be superior to all manner of temptation—to fear or resentment, and make

truth the standard of your proceedings. This line of conduct will be the means of convicting and punishing the guilty—of acquitting the innocent, and produce in your own minds the pleasing reflection of having conscientiously discharged the trust committed to you.

Your duty, gentlemen, is of a two fold nature, viz. to find indictments and make presentments—An indictment is the verdict of the jurors, founded on the accusation of a third person, and is drawn up by the immediate officer of the government, specially authorized to prosecute in her behalf; upon which the jury endorse a true bill—or not a true bill, agreeably to the testimony adduced to them.

A presentment is the special act of the grand jury founded upon their knowledge of an offence, or upon the information of some individual made to their body.

In making presentments it is necessary to examine the several statutes inflicting penalties, as to the time limited for instituting prosecutions. If they be silent as to that point you will refer to the 32d section of the “act for the punishment of certain crimes against the United States.” Be careful to note down in any presentment you shall make, the time and place, when and where the offence was committed—If made by an informer, set his name down at the foot of the presentment, together with the place of his residence.

The particular laws to which I shall at this time request your attention you will find under the following titles, viz.

An act for the punishment of certain crimes

against the United States ; an act to punish frauds committed on the bank of the United States ; an act for the punishment of certain crimes therein specified ; an act to regulate trade and intercourse with the Indian tribes and to preserve peace on the frontiers ; an act in addition to the act for the punishment of certain crimes against the United States.

To the 5th section of the last law your enquiry will I expect be particularly directed.

Gentlemen of the Grand Jury—In your retirement I require you to consider well the situation in which you are placed. You are said to be the bulwark standing between the chief executive power and the citizen to shield and protect him against oppression. Standing in this important situation it will become you to examine well the evidence which may be adduced to you ; and carefully to distinguish between that which is legal and that which is illegal.—Confine the examination of the witnesses to the facts which shall be stated in the indictment to be preferred to you—Confine the examination to facts within their own knowledge, and do not permit them to relate that which has been told them by others, because that is hearsay and not legal evidence. A proper attention to this subject will save you much trouble, and it is proper that you should be thus circumspect, because, your examination is confined to the prosecuting witnesses only, but from them I trust you will extract the truth and the whole truth ; and confine your enquiries to facts committed within the district, because your jurisdiction cannot exceed its limits.

Although, gentlemen, you are thus placed as a barrier against oppression, it is nevertheless your duty to accuse upon legal evidence those who are guilty, that they may be exhibited to public view, tried and punished agreeably to law ; otherwise you defeat the object of your institution, and will permit the fundamental principles of government to be subverted.

Gentlemen, you will now receive and consider of the subjects which shall be submitted to your consideration. If any difficulty occurs, the court will be ready to advise you.

When judge Innis had delivered this charge, Henry Clay, Esq. as Counsel for Colonel Burr, rose and addressed the Court in the following terms :

“ The only apprehension which Colonel Burr has on this occasion is the danger of delay—he fears nothing else—he dreads nothing else. This is the second time that the public attorney has caused him to dance attendance on this court. A few weeks have only elapsed since a similar charge as the present was advanced against him by Mr. Daviss. He did not then shrink from investigation ; no sooner did he hear that his character had been mentioned with reproach, than he hurried to meet the charges ; he voluntarily came forward ; he was zealous that every enquiry should be made into his conduct, and that all his actions should be scrutinized ; he even used his utmost exertions to compel the attendance of witnesses, and to aid the Attorney in bringing forward his testimony—But what was the conduct of the



H. Clay

Attorney at that time ? When the grand jury were ready to enter into the examination of the witnesses, and your honor was upon the point of delivering your charge, he informed them that he was unable to proceed on account of the non-attendance of a single witness, whose evidence he pretended was a most material link in the chain of this wonderful conspiracy, of this secret and mysterious plan in which Colonel Burr is supposed to be engaged for the conquering of provinces and the erection of empires. No sooner, however, did he imagine that Colonel Burr was beyond the reach of the jurisdiction of this court, than his application was renewed ; another grand jury were summoned, and the whole country alarmed with the rumours of an immediate insurrection, the enlistment of men, the purchasing of provisions and military stores, the equipment of gun boats and flotillas, the arrival of boats loaded with musquets, powder and ball, and the issuing of blank commissions ; in short, the whole fancy of the Attorney was exerted to muster up every appendage connected with conspiracies, plots, and combinations. He probably supposed that if Colonel Burr did not come forward it would be easy to impress the mind of the public with the belief that he dared not face the charges alledged against him. He, perhaps, imagined in this way to impose upon the credulous with the idle story of Colonel Burr's absconding, of his running away from justice ; and by this means of procuring a triumph for himself and those connected with him, in per-

secuting and harrassing Colonel Burr, who is a stranger in our country, and is merely passing through it without any other object than business of a private nature; and is a stranger to be harrassed and perplexed in this manner—to have his time and attention diverted from his own affairs, to be tortured and obliged to account to this court for every action, even those of the most trifling nature, in order to gratify the whim and caprice of the Federal Attorney? God forbid! Let not, for Heaven's sake, such a stigma be affixed to the character of Kentucky. Let it not be said that no stranger can pass through our country without the most atrocious charges being advanced against him. No—we are not so barbarous. Whatever the public attorney may imagine, whatever arts he may use, it will be impossible that he can ever impose so far upon the credulity of our citizens. They have not yet forgotten the farce and pantomime of conspiracy which was acted in this court a few weeks since, nor will they be disposed to have their feelings again insulted in a similar manner. The public opinion is not always to be trifled with. I hope this court will not sanction a delay. I know they will not. Colonel Burr is equally zealous now as before, to have his conduct and his actions enquired into. It affords him the highest gratification to have an opportunity of vindication. He is only afraid that the attorney will again trump up some trifling apology for postponing the enquiry, and in this manner continue to torture and perplex him.

He has already suffered considerably in the prosecution of his private concerns by attending to the investigation of this fanciful conspiracy, and I hope he will not be made to suffer more."

Joseph Hamilton Daviss. I understand the drift of this thing : I know the manœuvres both of Colonel Burr and his Counsel ; but all their attempts to prevent or defeat my purpose will be vain. They imagine if the jury go out, and no true bill is found, which in the absence of material witnesses, will be the case, that their triumph will be glorious, that the popularity of Colonel Burr will increase, and that he will be regarded as the object of a malicious prosecution. But I trust the Court will consider that the grand jury are called in this instance on no common occasion. It is a particular one and one of the greatest importance to the country. The attendance of Colonel Burr has not been required here ; his presence was perfectly unnecessary ; it was not at my instance or solicitation that he has come forward. It was a voluntary act both of him and his counsel. I hope, therefore, that neither he or his counsel will interfere. If the grand jury find a true bill then his appearance will be necessary, then every opportunity will be afforded him of proving his innocence ; but until then I request that I shall not be interrupted.— There are a number of indispensable witnesses in this case ; each who has been summoned is indispensable, and without the attendance of each it is impossible I can proceed.

Mr. Lockett is an indispensable witness ; general Adair is an indispensable witness, they are not here—without them I shall not prosecute the investigation. I shall pursue the course which I have laid down, nor shall any arguments divert me from it. I hope, therefore, that the court will direct the jury to adjourn until the arrival of those witnesses whom I have named.

Mr. Clay. The idea which the Attorney has conceived on this subject is a most singular one. All that we ask is that he pursue the course which the law of the land warrants. We solicit no favour, no deviation from justice, but demand the right to which every citizen is entitled. Something has been here said about Col. Burr's presence not being necessary, but will he tell us that the feelings of any gentleman or person not callous to every sense of honor or virtue would permit him to sit an indifferent spectator, while charges of so enormous a nature were in circulation against him. Can it be supposed that a person of the very respectable standing and elevated situation of Colonel Burr would be indifferent to such charges. No such idea can be entertained but by those who either lost to every sense of honor and shame are callous with regard to public opinion, or who being by nature cold and phlegmatic feel neither for themselves or for others. But, sir, this is not the character of Col. Burr. Few men are possessed either of the honor or feelings of this gentleman. He is alive to the tenderest emotions of sensibility, and the charges which

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have been circulated against him, from what motive God only knows, must impress upon his mind the greatest anxiety. It is impossible it can be otherwise, it is impossible he can enjoy peace or tranquility until this matter be cleared up. It is true that conscious only of virtuous and patriotic designs he has no dread of the consequences which may result from the rumours now afloat, but he feels that temporary and painful anxiety which every honest heart and virtuous mind would experience under similar circumstances. Is Colonel Burr's name to be mentioned with reproach and thus made the butt of slander, because there is no process out against him, because no deputy Marshal has laid his hand upon his shoulder? Is he on that account to remain idle, is he to have no opportunity of vindication, is he to be treated with scorn and contempt because he has voluntarily presented himself to this grand jury, and because he has not, as probably was expected by the attorney, ran off and endeavoured to escape from investigation? When the public attorney wishes to assume powers with which he is not invested are we to make no opposition, are we to permit him to face upon this court principles which were never heard of before, to call and adjourn the grand jury at his pleasure? No, sir, such an attempt shall never be made on the rights of that body of men without resistance on my part. I hope and trust the grand jury of this country shall never be converted into the weathercock of the public attorney and turned at the whim

and caprice of this officer of government. I demand of him a single instance where the public attorney of any state in the Union has exercised the power with which he contends he is invested. I require of him to produce a single example where the prosecuting attorney for the public, has told the grand jury "I am not prepared, one or two of my witnesses are absent, you must adjourn until they come forward." I ask of him, sir, to tell me a single instance of this kind in this or any other country. No, sir, no such instance is to be found, it is a new species of prerogative which the ingenious fancy of the attorney has suggested to answer his purposes on this occasion, which he tells us is so very important to the interest and safety of the country. It is not the province of the attorney to limit the number of witnesses to be called, to tell the grand jury this or that number are necessary, or to twist and turn them at his pleasure. I take the powers and functions of the grand jury to retire after the judge delivers his charge, to send for what witnesses they may see proper, and if any doubts in matters of law occur to send for the public attorney in order to have his opinion, but not to regard the public attorney as the organ by whose will they are to be directed. Such, sir, are my ideas on this subject, and such, sir, I trust, will be the opinion of this court. I hope that no innovation whatever in the forms of justice, or any infringement on the rights of the citizen will be tolerated. We are ready to conform to any rules which law may sanction, but we do not wish to see

the law overreached on this or any other occasion. Were this privilege of adjourning and dismissing the grand jury at pleasure granted to the attorney, there is no saying when his thirst after power might stop. He might, for aught I know, next take into his head to make presentments as well as to draw indictments; in short, sir, he might proceed to assume and exercise all the rights of the grand jury—in fact, to become a grand jury himself.

Mr. Davells. As it respects the grand jury, the public attorney is certainly their proper organ, and he acts under the auspices of the court. He has the power, by consent of the court, when he sees proper, to adjourn and call together the grand jury. This power I shall always exercise, nor shall I be deterred on the present occasion by the opinion of Mr. Clay or any other; I know his motives, but I disregard them. I now think it is proper, on account of the absence of two material witnesses, that the grand jury be adjourned until to-morrow, and hope the court will agree with me in opinion.

Judge Innis. It is the province of the grand jury, when met, to send for those witnesses that are directed by the public attorney, and call upon others as they may please, but not to wait or adjourn as he may direct. On the last occasion I regret that I did not order the jury to retire and examine the witnesses who are present; it did not occur to me at the moment that this was the mode which I ought to have pursued. As the day, however,

is now far advanced, and since the attorney says there are two essential witnesses absent, whom he expects to-morrow, the grand jury may adjourn, but I shall expect their punctual attendance to-morrow morning at ten.

Mr. Daveiss then moved that the court issue an attachment to compel the attendance of Gen. John Adair.

Mr. Clay. I shall certainly oppose this motion, not because I dread the testimony of General Adair being unfavorable to our cause; there is no testimony which the attorney can produce which we fear. We invite every species of evidence which he can or may bring forward; but, sir, I oppose the motion as being both irregular and as tending to wound the feelings of the gentleman against whom the motion is made. It is irregular because the day is not yet expired upon which General Adair was called to attend. No attachment, therefore, can issue until to-morrow. There is no particular hour fixed for this court to adjourn, and as no hour was mentioned in the subpoena, if Gen. Adair arrives any time before twelve at night he fulfils what the law requires. I know also that unless business of a most extraordinary or unexpected nature occur, that Gen. Adair will come.

Mr. Daveiss. When witnesses are summoned to attend the court it is always understood that their presence is required at the hour of the meeting of the court. The general hour for meeting of this court is ten in the morning. Although no hour is mentioned



A. Burr

in the subpoena, this, therefore, is the hour generally understood. It is true that the practice of duelists has always been to name the hour of appointment, but it has not been the practice of this court or any other with which I am acquainted.

Judge Innes. As no hour was mentioned in the subpoena, witnesses are certainly not compelled to attend at the meeting of the court. If they come at any time in the day it is sufficient. There is no particular time for this court to adjourn. I have sat until five, six, and even nine at night. No attachment, therefore, can issue against Gen. Adair until to-morrow, but that the attorney may have no reason to complain, I shall open the court at the Clerk's office at any hour and as early as he pleases. I shall attend there by six in the morning.

Colonel Burr. I am satisfied that if Mr. Daveiss will only be so obliging as to write a letter to Gen. Adair requesting his attendance, and send a messenger off with it this evening it would answer all the purposes of an attachment, or if the attorney chuses that I shall write to him it shall be done.

Mr. Daveiss. I prefer proceeding according to law; as the judge has expressed his opinion that no attachment can issue before to-morrow morning I acquiesce, and agree to the hour which he has named.

The court then informed the grand jury that they were adjourned until to-morrow (Wednesday morning) at nine.

WEDNESDAY.

After the names of the grand jury were called over, the public attorney laid before them an indictment against General John Adair, late Senator of Congress for the state of Kentucky, containing the same charges as those alleged against Col. Burr, viz : arming and preparing a military expedition for the invasion of Mexico and other Provinces of his Catholic Majesty. He then addressed the Court in the following terms.

As this is a business of the utmost importance and as the plan of it is not known to the gentlemen of the jury, although I have the fullest confidence in their judgment, yet I am well aware that they are not adequate to the interrogation of the witnesses, and unless I be present at their examination and assist in putting those questions which I know will force the truth and lead to the disclosure of facts which will authorize the gentlemen of the grand jury to find a true bill on this occasion, but if the Court do not permit me to attend the grand jury, I am sensible the indictment will fall to the ground. It is impossible that any person who is a stranger to the nefarious machinations which are carrying on, can collect together the links which bind together the chain of circumstances that constitute the necessary proof which will be essential to find a true bill.

Mr. Clay. This request of the public attorney is truly a novel one. It is a novelty in the code of criminal jurisprudence. Among the many novelties which the attorney

has wished to introduce in this business, it unquestionably takes the lead. When he will cease with his innovations I know not. It seems to me that his desire is to revolutionise all the forms of law and to turn the respectable body of the grand jury into a babble for his fancy to play upon. Besides it is an insult upon the judgment of the respectable gentlemen who compose this jury, which I am certain the court will never grant. If the gentlemen of which this jury consist be not adequate to the examination of the witnesses, they are not proper persons to sit as jurymen, but I believe this is what the attorney will not presume to say. The indictment of itself sufficiently explains the nature of the questions which are to be asked ; it is the only guide by which the gentlemen of the jury are to be directed, any questions which do not regard the subject charged in the indictment are improper, and ought not to be put. It requires neither extraordinary judgment or depth of sagacity to frame the necessary questions for this examination. The grand jury are sufficient for the purpose without the aid of the penetrating skill of the public attorney—There is not the smallest necessity for the addition of his powers neither his ingenuity or sagacity are in any ways requisite. The gentlemen of the grand jury are the only persons warranted by law to interrogate the witnesses, and I hope therefore the court will not concede to the attorneys request.

Mr. Daveiss. The only novelty which I see in this court is Mr. Clay but I shall not be diverted from the course I have laid down to pursue by his novelities—You know

the only person who can call me to order, and the novelty which Mr. Clay wishes to introduce of preventing the proper officer of Government from attending the grand jury I hope will not be allowed.

Mr. Clay. I presume, sir, if on this occasion I be thought to indulge too freely in expressing the honest sentiments of my mind with regard to the extraordinary request of the attorney, a desire of preserving the rights of my fellow citizens, will be the only cause imputed to me. For their rights and for the liberty of my country I shall never cease to contend. All at once this office of the public attorney, springs into an importance never before contemplated. An attempt is made to erect it into an inquisitorial tribunal for the torturing of virtuous citizens. The fancy of the attorney is also to be exerted for the invention of verbal rules and criticism to puzzle and perplex the unsuspecting evidence. The grand jury, that great palladium of our rights, are about to be converted into a set of inquisitors, perhaps as fatal to the liberty of the citizen as ever were the inquisitions under the most despotic monarchy. The public attorney is to act the part of the Inquisitor General, and to screw from the witnesses, with instruments he has previously prepared, such confessions as will best answer his purpose. Such, sir, is the establishment which the attorney is desirous of forming in place of the good old and sound institution of a grand jury. It is, I confess, a chimerical monster, and one which I trust will never find a place in this country, except in



H. Clay

the brain of the gentleman who has proposed it. The woods of Kentucky, I hope, will never be made the abode of inquisitors, or our simple establishments exchanged for the horrid cells of deception and tyranny. The groans of the suffering victims of priesthood and persecution under the lash and the block, shall never be heard in our courts of justice. These instruments of monarchy shall never be made the means of extorting evidence under our free and happy government. They may suit the disposition of the public attorney but I believe not another individual will be found who will sanction them. I appeal to the practice of every other court; I even appeal to the courts of Great Britain. There, where law is tyranny, and its minister's tyrants, when compared with the mild system and impartial judges of our free constitution--such a proposal as the one just made by the attorney of this court would be rejected with the contempt which it deserves. Yesterday the attorney was desirous of exercising the power of adjourning the grand jury as he pleased, or when it suited his purpose; your honor then gave your opinion on this point; it was such an opinion as I anticipated and expected, and I hope your sentiments with respect to the present motion before you will accord with that justice which has been uniformly displayed in this court. If the motion of the attorney be either bottomed upon right or founded upon law, I yield the argument; but, confident as I am that he is supported by neither, and that the principle for which he contends is subver-

five both of every right and of every law, and that the consequences which will result from its adoption will lead to effects of the most dangerous nature to our liberty and our rights, I regard it my duty not only in the situation I now stand, but as a citizen of the state, to oppose it.

Mr. Daveiss. I speak to you, sir, candidly my sentiments. Although I respect this Jury, yet I believe they are ignorant of the plan; and the most studied attempt which is made by the counsel employed, in order to cut off investigation. Mr. Clay calls my request to attend the grand jury in their examination of the witnesses a novel proceeding. He has displayed in all the figures of rhetoric the dangerous consequences which would result from the adoption of my motion. Our constitution and all our liberties, according to Mr. Clay, would be in danger; but I contend that neither our constitution or the liberty of the citizen would be jeopardized. Even granting the grand jury is made in this manner and find a true bill without cause; still this does not convict the accused. He has afterwards the privilege of a fair trial and an impartial jury. No innocent man could ask for more; but it appears to me that this desire on the part of the accused to exclude me from examining the witnesses only proceeds from a consciousness of their guilt, and if the examination be conducted by a person versed in their designs that the whole plot will be discovered. It is impossible, from their zeal to defeat my motion, that they can have any other views; but I

presume that your honor will not agree with them in opinion or oppose me, so as to defeat all the purposes of this prosecution. If I am prevented from attending the grand jury I know it will be impossible to extract sufficient testimony for the jury to find a true bill. The whole depends upon the fate of this motion. What I ask is no novelty, it is the practice, and has been the practice, in every court with which I am acquainted.

Mr. John Allen. I think it is my right to be heard on this great and important occasion. The principle for which I contend is that the grand jury shall attend to the spirit of our laws and of our constitution. If they do not attend to this important guide, the only true director which they have, their labours will not only be vain but attended with the most fatal consequences. The charge in the indictment at present before them is of a most serious nature; but still the nature of the examination to be followed is very explicit. It is impossible the gentlemen of the grand jury can err in the questions which it is their duty to ask. From the motion of the attorney it should seem that he was desirous of puzzling the witnesses or to entrap them so as to gather some expressions which might authorise the grand jury to find a true bill. He has told us that it is and has been the practice with every court with which he has been acquainted for the public attorney to attend the grand jury and aid them in the examination of the witnesses; but I call upon him to name to me or to produce a single instance where such a

practice was never tolerated, I know he cannot, the thing never was done in this or any other place I ever heard of. It is against the spirit and laws both of this state and every other state in the union. In matters of law and matters of law solely, the grand jury have a right to consult with him; but in matters of fact he has no right to appear. Even in the Government of England this has never been done, and I hope the practice is not to begin with Kentucky. With regard to matters of law the case is very different it is not to be supposed that the grand jury are lawyers and therefore able to expound every intricacy which may occur; but in matters of fact it is presumed that any person who can execute the office of a jurymen is capable of judging of the correctness of facts—Our constitution has guaranteed to us the rights of a grand jury which are not to be invaded by any officer of Government whatever.

But if the attorney will go in I hope he will not object to us also attending the grand jury. An ex-parte testimony surely is illegal and will not be admitted. The doctrine for which the Attorney contends would subvert every species of justice in criminal trials were we to adopt it, we should be departing from the very substance of equity and only clinging to the shadow.

Mr. Clay, This application in the first instance was made by the public attorney upon the ground that it was a matter of right with which he was invested of going in to the grand jury and assisting in the examination of the witnesses. I opposed it because I regarded it,



H. Clay



as unconstitutional; as contrary to every law and right; and as leading to consequences most destructive in their tendency, I consider it as one of the most noxious principles which could be introduced in a court of justice. I care not with Mr. Allen in what attitude or capacity I am standing here, whether as counsel for Colonel Burr or simply as expressing my opinion in my professional character or as a private citizen combating for those rights and for those liberties which shall ever be the objects first in my mind and nearest to my heart. Did I entertain the remotest idea of Colonel Burr's guilt or of the truth of those charges which have been advanced against him; I should instantly renounce both him and his cause I should spurn at the thought, of appearing as his advocate or countenancing vice which I trust I hold in equal abhorrence with the public attorney or any other man. But I believe the charges have not the smallest foundation in truth; I am confident they are only founded on idle rumours and the weakest credulity that they are the machinations of malice, jealousy and suspicion, that have been imposed upon the public attorney, and which have only assumed a serious shape by the solemnity of an affidavit. Is it not enough for him to pursue the usual course always adopted in such cases? is it not sufficient for him to trust the matter to the judgment of a grand jury? Why does he wish to follow the example of those abominable oppressors of mankind of the despots and tyrants of Europe by erecting a tribunal as I have already said as dreadful as the inquisitions of Rome and Portugal and as unjust if not so

bloody as the tribunals of Marat and Robespierre. Is justice again to be weighed in the scale of the rack, the wheel and the lash? does he desire his country should view a parallel to those times when testimony was compelled by torture, and the blood of expiring agony was to be the seal of evidence? Are our grand jury to be a new sort of inquisition, a species of star chamber sitting in dread conclave, while our public attorney is to screw from the witnesses trembling at his looks such words and such expressions as may tend to convict the unhappy object of his revenge? Are this body of men which are an honor to our country and the best rampart between tyranny and freedom to descend to the despicable situation of a plodding caucus, brooding over the wretched victims of persecution, and catching at every incident which may approach to the shadow of crime? When this project, this new fangled principle of law takes place, then the most incoherent expressions will be tacked together like the links of the chain of conspiracy that he speaks so much of in order to form the basis of conviction. Then there will be no escaping the claws of the public attorney; he may indict and persecute whenever his fancy may direct, or his malice may suggest.

Closeted along with a selected jury, we shall see him devising every method of putting the timorous witness to a non plus, sounding him this way and that way, to answer his views rejecting such answers as operate against his designs or wishes; but recording every syllable that contains a vestige of evidence calculated to convict. What a field then will arise for, the establishing the existence of plans, plots-combinations and conspiracies, in place of as-

faults and batteries! Our courts will be crowded with indictments for misdemeanors and treason. Every political purpose will then be effected by some new fashioned plot; every candidate for fame will only have to accuse his rival adversary as being the projector of some mysterious conspiracy, make friends with the public attorney for that purpose and have him arraigned before a grand jury of his own party. The attorney enters with a band of witnesses; all the ceremonies of a real inquisition are observed; a set of questions previously prepared are put to the unsuspecting witnesses; the necessary evidence is thus easily made out, a true bill found, and the character of the unhappy person accused ruined before an opportunity can be afforded to him of exculpation in open court.

All however will not do, all the art of the attorney I hope in this case will be exerted in vain. Although he has boasted of it being the practice with courts in general for the attorney to examine the witnesses before the grand jury; I challenge him to produce a single instance of the kind, I call upon him to mention where and when such a practice was ever tolerated. If he has a right to examine the witnesses; the defendants certainly have an equal privilege of confronting him with their exculpatory evidence. If he allow of this, then we shall be ready to grant his application; we are ready to meet him in any fair or reasonable grounds, that he please to point out. We do not mean to shrink from investigation; on the contrary we solicit it, we request of him to send for what testimony he pleases, and if there should be any witnesses

whose attendance he may find a difficulty in procuring, that we shall use our endeavours in bringing them forward; but we wish if he insists for the privilege of examining them himself, and putting such questions as he may chuse, that we may have a similar right. We only ask that he pursue what is equitable and proper, then we are not afraid of the consequences which may result, we have no dread of any testimony he may bring before the jury, we know there is no testimony can be brought whose evidence will amount to a shadow of the charges contained in the indictment; but I consider it my duty always to oppose the practice of an ex-parte evidence. An ex-parte evidence is the most dangerous species of testimony which any court could sanction, but I am confident this court will never give its consent to such a practice, a practice that would tend to overturn all forms of equity, open a road for villany to combat virtue, and for malice to rear its head with impunity. Were such a practice tolerated there would be no safety for the honest citizen, he would every moment of his life be in danger, his character would be liable at all times to be arraigned in a secret conclave composed perhaps of his very enemies before whom he was debarred from appearing or of answering his accuser the greatest enemy of all whose art and whose zeal sharpened by the spirit of revenge, and goaded on by the most capricious mania of infuriated malice might over run the most rigid virtue and the sternest integrity. I mean not however to make any insinuations against the characters of the gentlemen who compose

this jury, or even against the character of the Attorney. I well know that a more respectable jury than the one present could not be found, and I am in hopes that the motives of the public prosecutor although founded in credulity are of the purest nature. But I wish to prevent every precedent which might lead or give a colouring to the establishment of an ex-parte evidence in our courts of justice. Independent of this cause I should exert every energy of which I was possessed to oppose such a practice, let the attorney pursue the road which has always been followed in similar cases; and he shall have our hearty concurrence; let him leave the whole testimony to the discretion and judgment of the grand jury, for them to interrogate and frame such questions as they may see proper, and from us he shall receive no opposition. We are ready to submit our cause and the investigation required to the gentlemen before us. Conscious that not the slightest particle of evidence that may tend to convict will be produced, we dread nothing; but already anticipate the result.

Mr. Daveiss. I shall consider it as thoroughly smothering this business; if I am prevented from the examining of the witnesses. It was my duty to bring this matter forward as it is my duty to investigate the business, and if I be debarred from the nature of investigation, which its importance deserves and from that species of examination which alone will lead to a developement of the project I shall at least have the satisfaction of performing that duty which the trust that I hold has imposed.

Mr. Clay. I profess, the present subject is one of a nature which requires the most serious

investigation. In this I agree with the attorney ; but still as I have said I should oppose the smallest deviation from law or the ordinary practice of this court. I only desire that the usual mode be followed, and this I trust the court will observe.—

Colonel Burr. It must have appeared to the attorney that no disposition has been shewn by me, to avoid an enquiry into the charges which he has advanced. On the contrary he surely must be satisfied that every exertion in my power was used to aid and assist him in procuring testimony ; he knows well that several witnesses have attended particularly at my request whose evidences otherways, he might have experienced a difficulty in procuring. Under these circumstances, I trust the court, jury, and those present can never entertain an idea that any attempt is made on my part to suppress evidence ; but while it is my earnest desire to assist the attorney in the investigation of my conduct and my actions, still I am opposed to any innovation or any infringement which he may attempt in the ordinary forms of prosecution. I am willing to submit to any regulations which are sanctioned by law ; I am ready at all times to consent, that law and equity shall compose the scale by which, my actions are to be tried ; but I shall never agree that the forms of justice and the dearest rights of my country are to be invaded in this case or any other where I have an opportunity of defending them. The crimes with which I am charged are of the most heinous sort. To vindicate myself and to prove my innocence, certainly are on the present occasion, the objects which materially engage my attention, but sir, these I consider as of little impor-



tance when compared with any innovation or attempt that may be made in that law by which a grand jury is to be regulated. I too was once entrusted in another state, with the discharge of that office which the prosecuting attorney here fills; but sir, during the whole period that I acted as public attorney for the commonwealth, I never once entertained an idea that I was invested with the power for which the present attorney contends. I saw no precedent for it in the courts of Great Britain; I knew of no precedent in the state in which I lived, and I had heard of none in any of the others in the union. Indeed had I had any example of the sort before me; I should have felt extremely scrupulous in the exercise of it. I would have regarded the practice of the attorney on the part of the commonwealth, examining the witnesses before the grand jury, as one of a most dangerous tendency, and which ought to be entrusted to the discretion of no individual. But I had seen or heard of no instance of the kind, or until this moment did I ever understand the principle was asserted, however if the attorney present will produce any precedent in this court or the courts of the other states, I for my own part shall have no objection, to submit the matter entirely to the court.

Judge Innis. While I acted as public attorney in this state, I never conceived it to be my duty or that I had a right to go into the grand jury and assist in the interrogation of the witnesses. I conceived that I was not at liberty to confer with them except upon matters of law and then only when my opinion was asked. I have never heard of a precedent to sanction the present application of Mr.

Daveifs, and as none has been mentioned, I deem it improper. Mr. Daveifs may confer with the grand jury in matters of law but not as regards facts.

The grand jury then retired, to examine the witnesses in the case of general Adair, at three o'clock they were called into court and adjourned until Thursday Morning at nine.

THURSDAY.

After the names of the grand jury were called over Judge Innis observed that he heard it was insinuated by the public attorney that there had been a variation in the charge which he had been accustomed to make to the grand jury. To prove his consistency in this respect; he read the most material parts in the several charges which he had delivered from March 1794 until the present time.

Mr. Daveifs then rose and renewed his application of yesterday, and observed he was willing to stand or fall as a lawyer by the American Bar if the court refused his request.

Judge Innis. If the jury request your attendance I have no objection, but otherways I cannot grant it.

Mr. Daveifs. As yesterday sir, this subject took a turn which was not expected; I have since thought proper to draw up a few interrogatories for the grand jury to put to the witnesses which if the court permit I shall hand to them.

Judge Innis. I have never seen the indictment; the interrogatories must regard the charges there specified.

Mr. Daveifs then read several questions which were intended to be put to Thomas Read. The purport of these questions was,

whether or not General Adair had, some months since, in a conversation with him, informed him that an expedition of considerable magnitude was in agitation against Spain; that he was acquainted with the leaders of it, and advised him as the practice of the law was extremely uncertain to embark in it.

Soon after these questions were read Mr. Read entered and requested to know of Mr. Daveiss upon what foundation he had stated them, as he regarded his character to be considerably implicated by them.

Mr. Daveiss replied that they were grounded upon a conversation which he had with him (Read) at Danvil in his own (Read's) house, when Mr. Read had related to him the substance of these questions.

Mr. Read then rose and pledged his honor to the court and the jury, that no such conversation, or one any ways similar to that stated, had ever taken place between him and Mr. Daveiss, and that he regarded it as a malicious fabrication on the part of the attorney to injure the rising reputation of a young man.

A warm dispute was then likely to have taken place between Mr. Daveiss and Mr. Read, when the judge interposed and observed, that the court room was an improper place for such altercations, and they had better retire and settle the cause of difference in some other place.

About one o'clock the grand jury entered and returned in the case of General Adair not a true bill,

Mr. Daveiss then presented them with an indictment against Colonel Burr, containing the charges specified in his affidavit, and ordered the names of the following witnesses to be called over, that the grand jury might send for them.

John Adair, Charles Lynch, Davis Floyd, John Brown, John Jordan, Thomas Bodley, Thomas T. Davis, William Fleckner, William Chambers, William Parker and C. P. Luckett.

The Grand Jury were called into court about five, and adjourned until Friday morning about nine.

FRIDAY MORNING.

After the grand jury had retired about half an hour one of the Deputy Marshal's entered and acquainted the court that the grand jury wished for a file of the Western World, as also the attendance of the Editors of that paper.

John Wood being present in court was requested to go for his partner J. M. Street.

J. M. Street was examined first. The amount of his testimony was, that he was possessed of no information in respect to Colonel Burr that would amount to evidence, and that the articles of agreement mentioned in the second number of the Western World said to have been entered into between Colonel Burr and John Brown, he had been since informed related to the Ohio Canal Company.

Examination of John Wood.

Question. Read this indictment and tell us if you know the truth of any of the charges therein specified.

Answer. I am possessed of no information that will amount to evidence.

Question. What are your impressions as to the truth of these charges?

Answer. I have received a vast deal of information with respect to this subject, and have made much enquiry in regard to it.— My first knowledge of it was about eighteen months ago. Until very lately I fully believed in the truth of them; but since, from several explanations I have had, and within these few days with several characters whose veracity I have no reason to doubt and who I have been assured are acquainted with Col. Burr's plans, as likewise from documents I have seen, I have been induced to change my former opinion, and to believe that the present designs of Colonel Burr is neither against the government or laws of the U. States.

Question. What did the articles mentioned in the second number of the Western World under the head of "No Federalism, no Burrism," relate to?

Answer. My first information in respect to them was erroneous. I have been satisfied that they only related to the Ohio Canal Company.

Question. Do you know what the business of Col. Burr's agents, mentioned in the second number of the Western World, at New Orleans and St. Louis, relates to?

Answer. I believe principally land speculations.

Question. Do you know of any person that can give us information on this subject?

Answer. I know of no one in this state possessed of so much information as Mr. Davells, the public attorney.

The grand jury came into court about two in the afternoon and their foreman read the following address to the court which was subscribed by each of them except Thomas Ratcliff who agreed that no true Bill should be found but thought the address was unnecessary.

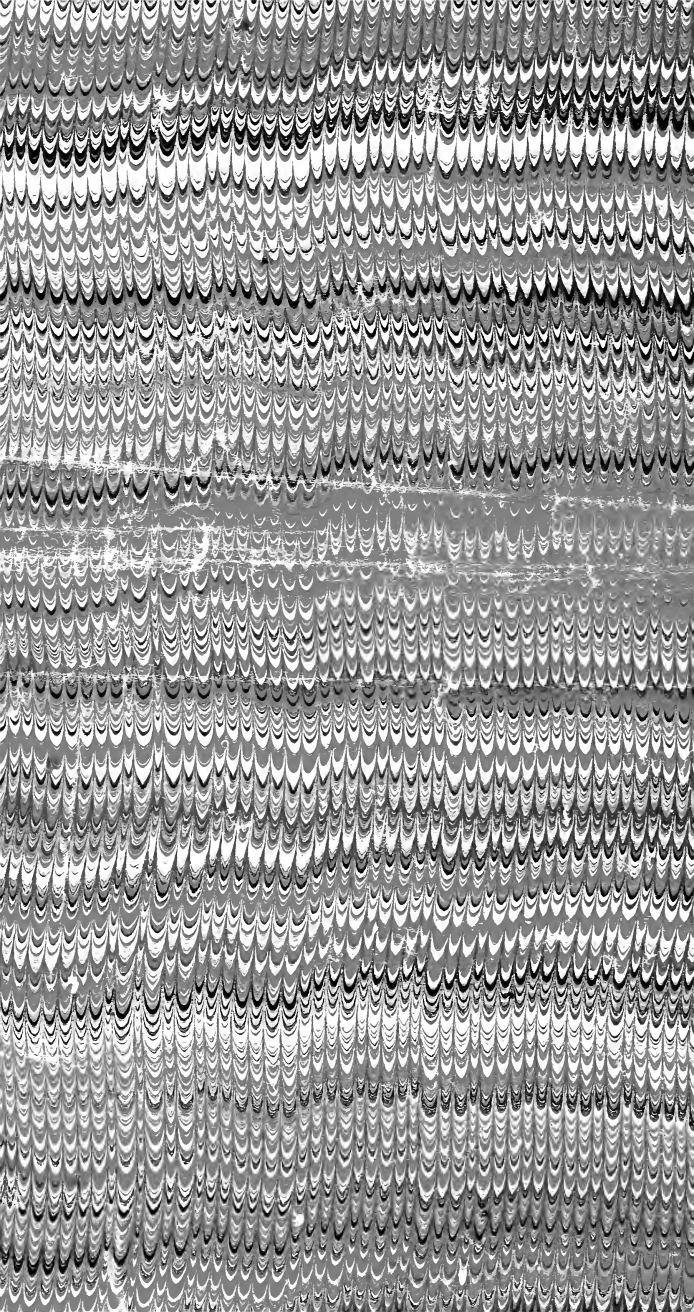
The grand jury are happy to inform the court, that, no violent disturbance of the public tranquility, or breach of the law, has come to their knowledge.

We have no hesitation in declaring, that having carefully examined and scrutinized all the testimony which has come before us, as well on the charges against Aaron Burr, as those contained in the indictment preferred to us against John Adair, that there has been no testimony before us which does in the smallest degree, criminate the conduct of either of those persons; nor can we from all the enquiries and investigation of the subject, discover that any thing improper or injurious to the interest of the government of the United States, or contrary to the laws thereof, is designed or contemplated by either of them.

December 5th, 1806.

Abraham Hite, foreman,

William Steele,	Thomas Johnston,
George Madison,	Robert Johnson,
John Patrick,	Nicholas Lafon,
Thomas Lewis,	John Kenton,
Richard Apperson,	N. Miller,
P. B. Ormsby;	J. Winlock,
George Greer,	Richard Fox,
Richard Davinport	Richard Price,
E. M. Covington	Nathl. Hart.
Abraham Owen,	John Bacon,
Thomas Respass,	



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